

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr A Sharkie representing Altus Group UK Ltd agent for Films at 59 Limited

Appeal Property: Workshop and Premises, Unit N2 CBBC, Lewis Road, Cardiff CF24 5EL

Appeal number: 681535522722/537NV17/57

The Matter Appealed against: 2017 Rating List

Date of Hearing: 6 March 2024

Appearances: Mr A Sharkie and Mr M Allen for the Valuation Officer (VO)

Date of Decision: 22 April 2024

Decision of Tribunal: Appeal Allowed in Part

Members of the Tribunal: Mr M Mason (Chairperson), Mr R Singh and Mr G Nechvatal

Tribunal Clerk: Mrs M S Minty and Mr S Kember

Introduction:

1. The appeal before the Tribunal followed a proposal made by Altus Group UK Ltd on behalf of the appellant in respect of the appeal property, that was received by the Valuation Office Agency (VOA) on 25 August 2021. The Agent asserted that the current Rateable Value (RV) of £21,500 was incorrect, contrary to law and a disproportionate reflection of the change in rental values in the locality between the dates of 1 April 2008 and 1 April 2015. The proposal sought a reduction to this assessment to £1 with effect from 1 April 2017.

Legislation and Case Law

2. Reference was made to the Statute Law and the Definition of RV that was found within Paragraph 2(1) Schedule 6 to the Local Government Finance Act (LGFA) 1988.

“2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from local non-domestic rating] shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions—

- (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*
- (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;*
- (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.”*

3. Schedule 6 also provided for the Antecedent Valuation Date (AVD), the date by reference to which the RV of the hereditament was to be determined, 1 April 2015 for the 2017 Rating List.

4. Reference was also made to the following case law:

Vines Ltd v de Mauny (Valuation Officer) (2010) UKUT 322 (LC) (20 September 2010) – This case set a general principle that the onus was on the appellant to prove its case.

Ladies Hosiery and Underwear Ltd v West Middlesex AC [1932] 2KB 679 – This case provides for correctness before uniformity.

Lotus and Delta v Culverwell (Valuation Officer) and Leicester City Council (1976) RA - This case provided guidance on the weight to be attributed to rental and assessment evidence.

K Shoe Shop Ltd v Hardy (VO) & Westminster City Council (Lands Tribunal) (1980) RA 333 at 353 (Court of Appeal) (1983) RA 26; 3 ALL ER 609 – This case gave consideration of 'tone of the list' and the meaning of the word 'locality'.

Oldschool & Oldschool v Coll (VO) (1995) RA/312/1994 – This case set general principle on burden of proof and duty of the Valuation Officer.

BPP Holdings Ltd v Revenue and Customs Commissioners (2016) 227-245 – This case regarded full visibility for the appellant of HMRC's case, as well as compliance & non-preferred status for HMRC.

Telereal Trillium v K Hewitt (VO) (2018) EWCA Civ 26 – This case regarded duty of Valuation Officer and Upper Tribunal.

Rogers (VO) v Evans [1985] RVR 186 – This case held a mezzanine floor to be rateable as part of the setting or premises.

A Wilkinson (VO) v Edmundson Electrical Limited (2016) – UTLC – This case regarded rateability of supported floors; usage of space does not mean it is further rateable.

5. The following is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that a statement or item of evidence has been overlooked by the Tribunal.

Summary of the evidence

6. Parties having agreed a 5% allowance for access with other minor changes to the physical assessment, requested the Tribunal to determine the £/m² to be applied and whether the upper floor area within the appeal property should be included within its area m².
7. Rental and Comparable properties referred to:
- 16 Properties within the postcode area of CF24 5 (Ocean Way and Splott) – sample of agreements.
 - Unit 42 Portmanmoor Road, Industrial Estate, Cardiff CF24 5HB – comparable in age, quality and size.
 - Unit G, Cardiff Workshops, Lewis Road, Cardiff CF24 5EJ – placed in the general-purpose scheme for properties not on major industrial estates in Cardiff which could include the 8 properties within the subject scheme.

- 1 Regents Trade Park, Galdames Place, Ocean Park, Cardiff CF24 5AA.
 - Unit 15b Ocean Way, Ocean Park, Cardiff CF24 5HF.
 - Unit 8 Pacific Business Park, Pacific Road, Splott, Cardiff CF24 5HJ.
 - Units A2 – A3 Compass Business Park, Pacific Road, Splott, Cardiff CF24 5HL.
 - Mss House, Ocean Park, Ocean Way, Splott, Cardiff CF24 5RE.
 - Site 11 Tremorfa Industrial Estate, Martin Road, Splott, Cardiff CF24 5SD.
 - Unit 99 Portmanmoor Road, Industrial Estate, Cardiff CF24 5HB – almost identical situation discussed on IPP 35144336.
 - Unit N5 CBBC, Lewis Road, Cardiff CF24 5EJ – rent devalued to a UAR of £42.08m².
8. Regarding the £/m² to be applied, Mr Sharkie explained that the appeal property was held on a leasehold basis, with an agreed rent of £21,000 effective from 1 September 2011. He contended less weight should be applied to that rent with it being over 3.5 years prior to the AVD. He considered the best evidence were those of a high volume of nearby property agreements and rental evidence which supported a reduction in the appeal property's current unadjusted rate (UAR) of £60/m² to £45/m². Having regard to the tone of the list in the area and in accordance with Unit G, Cardiff Workshops and N5, the appeal property would have attracted a value of £45m², as per the matrix agreed with the VOA.
9. Mr Sharkie was of the opinion that his proposed value of £45/m² was supported by the only rent in the scheme close to the AVD and the agreements in the surrounding schemes.
10. Regarding the inclusion of the upper floor within the £/m² area, with the use of photographs Mr Sharkie explained this area was situated above the office/kitchen and was only accessible via a ladder with no permanent access. The VOA had included this as a "mezzanine" and had measured the property using Gross Internal Area (GIA).
11. Reference was made to the case of *A Wilkinson (VO) v Edmundson Electrical Limited* which Mr Sharkie stated the presence or use of an area did not make it rateable on its own with additional conditions needing to be met. In support of his valuation, the VOA referred to the Form of Return (FOR) documented a total outlay of £3,500 for a new kitchen, replacement of office floors, installing of rails and in making it secure. Therefore, the VOA was seeking to add £1,920 to the RV for an area which could not be included under the GIA. However, the only cost of installing the space in question was to the rails as the other elements had been reflected by the uplift for kitchen/office space. He considered that the hypothetical tenant's rental bid would be increased by £1,920 per annum.
12. Mr Sharkie also made reference to the comparable property of Unit 99 Portmanmoor. That property had a storage above the office area which was only accessible via a ladder. Other than a lack of cheaply installed rails, that property was no different to the appeal property.
13. Mr Sharkie contended that the VOA also appeared to be removing the 2.5% allowance for the lack of heating within the appeal property. From the photographs provided, Mr Sharkie explained that there was a single overhead heating rail close to the roller shutter, however, this was not functional. The plug-in radiators and blowers used would not be required were the space heated.

14. In view of the information provided, Mr Sharkie believed that, given the space could not be included under the GIA nor as Plant & Machinery (P&M), it should be excluded from the valuation in line with the cited case law.
15. In relation to the £/m² to be applied, Mr Allen stated that the valuation approach for the appeal property and those in the immediate locality was specific to those properties. The rent on the appeal property supported this. As the valuation scheme was restricted to properties at this address it excluded properties of a similar nature in the vicinity. The values were bespoke for that specific location. If the valuation were to be placed in an alternative valuation approach, then it would have attracted an alternative level of value, namely £45/m². This approach failed to have regard to the fundamental concept of rating, that the assessment was based on the level of rent that can reasonably be expected. In reference to the case of *Ladies' Hosiery and Underwear v West Midland Assessment Committee*, Mr Allen stated that correctness must not be sacrificed for the sake of uniformity and it was therefore inappropriate to value using a uniform approach throughout the city and apply one level of value.
16. Mr Allen stated that there was a new letting for the appeal property prior to the AVD and therefore, would have been available to the hypothetical landlord and tenant when agreeing that rental level. Although the rental was set in 2011, it was still useful available information. Despite this, he asserts that Mr Sharkie had ignored the passing rent, which was a new rent set prior to the AVD. Since all evidence was admissible in these proceedings, the question fell to the amount of weight this evidence should attract. The analysis of the rent derived at a value of £57.97, taking into account the allowance for access but not to the upper floor.
17. Regarding the other rent of Unit N5 CBBC, Mr Allen stated that rent was set in April 2014, close to the AVD, with 5 yearly annual reviews. It was similarly located on a corner plot in the same development as the appeal property and was assessed at £23,250, valued at £60/m². The FOR document stated that the annual rent was reduced as part of UK Steel's support of company. Although this rent was relevant in terms of date, he placed no weight upon it in terms of evidence because the comments made in the proposal form indicated that the rental level was outside the normal expectations of the commercial market. Nevertheless, Mr Allan includes this rent for the sake of completeness. The rent analysed at £48.56/m² without any allowance for the corner access to the site.
18. Regarding the comparable properties, Mr Allen stated that these were broadly similar in location and size the appeal property. However, Since Mr Sharkie had failed to explain the reason why each of his comparable properties were in his evidence, Mr Allen stated the adopted values ranged from £27.50/m² to £55/m², which in his opinion supported the notion that uniformity was not as important as the correctness of the assessment. It should be noted that 6 of the 16 mentioned were of his own preferred value for this property was £55/m², the average being £48.13/m² and Mr Sharkie sought a value below that range at £45/m².
19. In relation to the flooring area over the office/kitchen, Mr Allen made reference to the guide on code of standard measuring practices and not on code of valuation. He explained that industrial properties such as the appeal property was accepted to be measured to GIA, being the area of a building measured to the internal face of the perimeter walls at each floor level. In valuing a property consideration had to be given to areas use and the value a landlord and tenant would put on those areas in rental negotiations.

20. For the appeal property, Mr Allen explained that the actual occupier had invested time and money for that upper floor area demonstrating that it is considered useful and valuable by the tenant. This space could be seen to be heavily used by the tenant and was of financial benefit as without that space they would have to pay for alternative storage or a larger unit in order to store the goods.
21. Whilst the code of measuring practice definition of GIA indicated mezzanines without permanent access should not be included in the GIA of a property, Mr Allen stated this was not the same as what could be considered as a rateable item or part of a rateable hereditament (unit of rateable occupation) for the purposes of assessing the rateable value of a property. A hereditament consists of:
- a. Land, buildings and other (non-plant) items that form part of the rateable premises.
 - b. Chattels, which are not plant, but which are sufficiently attached to and enjoyed with land so that its value is enhanced.
 - c. Rateable plant.

Since, Mezzanine floors were not generally “plant”, Mr Allen considered they were rateable as being part of the wider hereditament, being part of the “premises in which” business was conducted. Mr Allen supported his contention on this part with a reference to *Rogers (VO) v Evans* a mezzanine floor was held to be rateable as part of the setting or premises.

22. In this instance, Mr Allen felt that the floor could not correctly be described as a mezzanine floor, or as a constructed floor within a space. This was due to the supporting structure was of the construction of the pre-existing offices below, rather than one that was formed by the erection of steel pillars within the warehouse space. Therefore, the storage space had been valued as an upper floor, albeit with an acknowledgement that access was restricted. Tenant had gone to the extent of installing pulleys.
23. Mr Allen explained that the upper floor storage was not present at the time when the ratepayer rented the property in September 2011, and he had not included this area within his rental analysis. Also, the area noted as ‘The Cage’ (term used by the ratepayer) constructed in 2022, or the storage area over it had not been featured in the valuation or analysis.
24. Mr Allen stated that he had accidentally omitted the heating allowance from his valuation. Therefore, in adding the upper floor storage area, allowing for the access and heating, and amending the £/m² adopted to £55/m², Mr Allen requested the Tribunal to confirm an amended RV from £21,500 down to £20,750 with effect from 1 April 2017.

During cross questioning, the following salient points were noted:

- Mr Sharkie stated that the ladder restricted items in which could be carried up or down between floors.
- Mr Sharkie was unable to clarify if the safety gate came across as access point to the upper floor.
- Mr Allen stated that the upper floor area was constructed on top of a concrete block construction and had the use of pulleys.

Decision and Reasons

25. The basis of valuation for rating purposes is provided for by Schedule 6 (2)(1) of The Local Government Finance Act 1988, as amended by Section 1(2) of the Rating Valuation Act 1999.
26. The issue before the Tribunal related to the correct underlying level of value that should be adopted and to whether the upper floor area above the office/kitchen should be included.
27. In arriving at its decision, it was evident to the Tribunal that the ratepayer had invested considerable resources in the construction of 'The Cage' and was clearly of benefit to the ratepayer for the purposes of additional or alternative form of storage. Faced with these facts there appeared little justification for omitting this from the valuation.
28. The Tribunal noted that Mr Allen had erroneously omitted the allowance for heating and had corrected his revised valuation during the hearing.
29. In arriving at its decision, the Tribunal took account some of the unique features that influenced the way in which the subject property and others in the scheme were valued. Due to the nature of the schemes adopted for properties at this address, the adopted values are bespoke for this specific area and, in the Tribunal's opinion, should be valued accordingly.
30. However, whilst the appellant seeks to undermine this by drawing attention to a number of comparable properties found near to the subject property, the Tribunal cannot accept a value for the subject within the £45/m² because this level has been applied elsewhere in the locality. Moreover, in the absence of a satisfactory explanation about why they are being used, the Tribunal was not prepared to give much weight to the fact that some properties nearby were valued at £45/m². It was noted that several other properties were valued at £55/m² which is the level of value the VO now seeks for the subject property.
31. In addition, the Tribunal noted that the passing rent on Unit N5, which was arguably benevolent in favour of the ratepayer had devalued to £48.56/m², whilst the tribunal accepted that the rent in itself was not good evidence, it did not, in its view, support a value of £45/m² as the ratepayer contends for here.
32. The area described as Upper Floor was not deemed to be a mezzanine floor, but one used for storage and from the photographs supplied, used accordingly. With this in mind, the Tribunal accepted that it should form part of the valuation.
33. Therefore, the Tribunal orders the 2017 Rating List to be amended to Workshop and Premises, Unit N2 CBBC, Lewis Road, Cardiff CF24 5EL with a revised RV of £20,750 with effect from 1 April 2017. Accordingly, the appeal was allowed to the extent conceded by the Valuation Officer.